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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,860	04/18/2001	Sanjay Savur	50013-00001	6235
25231	7590	03/29/2004	EXAMINER	
MARSH, FISCHMANN & BREYFOGLE LLP 3151 SOUTH VAUGHN WAY SUITE 411 AURORA, CO 80014			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/807,860

Applicant(s)

SAVUR ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 41, 44, 45, 49, 62, 82, 117, 120, 122-125, 129 and 132 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5, 10-12, 25, 26, 143, 146, 153 and 155-160 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 3, 5, 10-12, 25, 26, 143, 146, 147, 148 and 153-160 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huston (WO'719) in view of Samuel (Ep '021), Bishop (WO '753), Fukado (Jp '083), and Lovegrove et al (Ep '042) essentially for the reasons fully and clearly detailed in the Office action mailed 3/14/03, paper no. 9 and 9/5/03, further in view of Bedrosian et al (4,079,152).

As noted previously, Huston and art taken as a whole teaches a method of adjusting the atmosphere within a substantially sealed chamber containing respiring produce wherein oxygen is monitored and if the oxygen level has fallen below a predetermined amount, an inlet means is opened admitting ambient atmosphere so that amount of oxygen in the chamber increases. As also noted previously the art taken as a whole also teaches it would have been obvious to modify Huston and monitor the oxygen concentration and not monitor the carbon dioxide concentration. It was the examiner's position that the art taken as a whole and particularly Lovegrove et al still taught that carbon dioxide would be removed- just that it was not critical to monitor the concentration of the carbon dioxide. One could still recycle the chamber atmosphere through carbon dioxide absorber in a timed manner whether the concentration was detected or not. Note that applicants claims, such as claim 1, do not indicate where the carbon dioxide removing means is located, what it is, and if it functions in an intermittent or continuous manner. Thus, claim 1 is broad enough to read on removing the chamber air on some type of schedule to

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remove carbon dioxide, whether the concentration is monitored or not. In any case, Bedrosian et al can be relied on to teach that it was conventional in the art to provide a method of adjusting the atmosphere within an enclosed chamber containing respiring product wherein not only is the atmosphere within the chamber maintained at pre set values, but without monitoring the carbon dioxide concentration within the chamber carbon dioxide is removed from the chamber (employing a carbon dioxide absorber) such that a non-zero carbon dioxide concentration is maintained. Note that Bedrosian et al discloses that the carbon dioxide remover is present in an amount sufficient to keep the carbon dioxide concentration in the chamber during the storage time below 2.5%. Thus, Bedrosian et al clearly predetermines the interaction of the film, which creates the desired atmospheric concentration, the respiration ratio of product, and amount of carbon dioxide removed to create the predetermined carbon dioxide concentration so that no carbon dioxide monitoring is necessary. To modify the combination and provide the step of removing carbon dioxide to predetermined level without monitoring the carbon dioxide concentration would therefore have been obvious in view of the art as a whole.

All of applicant's remarks have been fully and carefully considered but are seen to be most in view of the new ground of rejection,

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

S. Weinstein/af
March 24, 2004

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
3/26/04

Continuation of Disposition of Claims: Claims pending in the application are 1,3,5,10-12,25,26,41,44,45,49,62,82,117,120,122-125,129,132,143,146,153 and 155-160.